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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 618

THE UNITED STATES OF AMERICA, APPELLANT

vs.

**PATRICK B. CLASSIC, JOHN A. MORRIS, BERNARD W.
YEAGER, JR., WILLIAM SCHUMACHER, AND J. J.
FLEDDERMANN**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA**

FILED DECEMBER 12, 1940

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA

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1 In United States District Court, Eastern District of
Louisiana, New Orleans Division

No. 20067 (Criminal)

UNITED STATES OF AMERICA

vs.

PATRICK B. CLASSIC, JOHN A. MORRIS, BERNARD W. YEAGER, JR.,
WILLIAM SCHUMACHER, J. J. FLEDDERMANN

2 *Indictment*

Filed September 25, 1940

UNITED STATES OF AMERICA,

Eastern District of Louisiana, New Orleans Division:

In the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division, at the May term thereof, A. D. 1940.

The Grand Jurors of the United States duly empaneled, sworn, and charged at the term aforesaid of the court aforesaid, on their oaths present and charge:

That Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann, hereinafter called defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to wit, on or about September 1, 1940, and continuously thereafter up to and including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously conspire, confederate, and agree among themselves and with each other and with divers other persons to this Grand Jury unknown, to injure, oppress, threaten, and intimidate citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States; that is to say:

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Lou-

isiana for the purpose of selecting and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in the said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That it was part of said conspiracy and the purpose of said conspiracy to injure, oppress, threaten, and intimidate the said citizens and registered voters who cast their ballots in said second precinct of the eleventh ward of New Orleans in said Democratic primary election in the free exercise and enjoyment of their rights and privileges secured to them by the Constitution and laws of the United States, to wit, their rights and privileges to vote and to have their votes counted as cast for the candidate of their choice in said election;

That it was also a part of said conspiracy and the purpose of said conspiracy to injure, oppress, threaten and intimidate Paul H. Maloney and Jacob Young, citizens and candidates for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana in the free exercise and enjoyment of the rights and privileges

secured to them by the Constitution and laws of the United States, to wit, their right and privilege as citizens to run for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana, by preventing each of them from being legally and properly nominated as a candidate for said office; and, to wit, their right and privilege to have counted for them as cast, all of the votes cast for them in said Democratic primary election;

That it was further a part of said conspiracy and the purpose of said conspiracy to deprive Paul H. Maloney and Jacob Young of the votes cast for them in said second precinct of the eleventh ward by not counting some of the votes cast for them and by erasing the marks on the ballots placed by the voters in said precinct behind the names of Paul H. Maloney and Jacob Young indicating votes for Paul H. Maloney and Jacob Young, and placing in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge that, after the formation of said unlawful conspiracy, and in furtherance thereof, and to effect the object thereof, the said conspirators did commit and do certain overt acts, now herein specified, to wit:

OVERT ACTS

1. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants changed eighty-three (83) ballots that had been cast for Paul H. Maloney and marked and counted them as votes for T. Hale Boggs.

2. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants changed fourteen (14) ballots that had been cast for Jacob Young and marked and counted them as votes for T. Hale Boggs.

3. That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, the said defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to wit:

For T. Hale Boggs	528
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs.....	426
For Paul H. Maloney.....	94
For Jacob Young.....	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT TWO

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State of Louisiana, to wit, Commissioners of Election in the second precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940 and acting under color of a law and statute of the State of Louisiana, to wit, the said Act No. 46 of the Legislature of the State of Louisiana for the year 1940 creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly, and feloniously subject and cause to be subjected registered voters of the second precinct of the eleventh ward of New Orleans, inhabitants of the State of Louisiana, to the deprivation of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, to wit, their right to cast their votes for the candidate of their choice and to have their votes counted for such candidate as cast in the Democratic primary election of September 10, 1940; that is to say;

6 That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940 in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, with-

out exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

7 That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the names of Paul H. Maloney and Jacob Young indicating votes for Paul H. Maloney and Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney and Jacob Young;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to wit:

For T. Hale Boggs	528
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	428
For Paul H. Maloney	94
For Jacob Young	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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COUNT THREE

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State of Louisiana, to wit, Commissioners of Election in the second precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940, and acting under color of a law and statute of the State of Louisiana, to wit, the said Act No. 46 of the Legislature of the State of Louisiana for the year 1940, creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly, and feloniously subject and cause to be subjected one Paul H. Maloney, an inhabitant of the State of Louisiana, to the deprivation of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, to wit, his rights, privileges, and immunities (1) to offer himself as a candidate for the office of Congressman in the Congress of the United States for the Second Congressional District of Louisiana; (2) to be legally and properly nominated as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; and (3) to have counted for him all votes legally cast for him for said nomination for said office; that is to say,

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate

for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to elec-

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tion, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and did erase the marks on various ballots placed by said voters in said precinct behind the name of Paul H. Maloney indicating votes for Paul H. Maloney, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to wit:

For T. Hale Boggs	528
For Paul H. Maloney	8
For Jacob Young	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs	428
For Paul H. Maloney	94
For Jacob Young	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT FOUR

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That on or about September 10, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called defendants, who were then and there election officers of the State of Louisiana, to wit, Commissioners of Election in the second precinct of the eleventh ward, New Orleans, selected and acting in accordance with the provisions of Act No. 46 of the Legislature of Louisiana for the year 1940, and acting under color of a law and statute of the State of Louisiana, to wit, the said Act No. 46 of the Legislature of the State of Louisiana for the year 1940, creating the office of Commissioner of Election and defining the duties thereof, did unlawfully, wilfully, knowingly, and feloniously subject and cause to be subjected one Jacob Young, an inhabitant of the State of Louisiana, to the deprivation of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, to wit, his rights, privileges, and immunities (1) to offer himself as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; (2) to be legally and properly nominated as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; and (3) to have counted for him all votes legally cast for him for said nomination for said office; that is to say:

11 That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940.

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of electing and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in said Second Congressional District of Louisiana nomination as the candidate for the Democratic party is and has always been equivalent and tantamount to election, and that, with-

out exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

12 That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the name of Jacob Young indicating votes for Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Jacob Young;

That the defendants certified in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to wit:

For T. Hale Boggs.....	328
For Paul H. Maloney.....	8
For Jacob Young.....	3

when in truth and in fact the correct vote cast was:

For T. Hale Boggs.....	426
For Paul H. Maloney.....	94
For Jacob Young.....	17

all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT FIVE

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called the defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to wit, on or about September 10, 1940, and continuously up to and including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly, and fraudulently devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and claims, from Paul H. Maloney, from Jacob Young, from the legally and qualified registered

13 voters of election precinct two, ward eleven, of the City of New Orleans, from the Democratic party of the Second Congressional District of Louisiana, from the citizens of the Second Congressional District of Louisiana, from the State of Louisiana and the Secretary of State of Louisiana, and from the United States of America and the Congress of the United States, and divers other persons to your Grand Jurors unknown, which said scheme and artifice to defraud was to be effected by the use and misuse of the Post Office establishment of the United States, and in furtherance of and for the purpose of executing said scheme and artifice, did deposit and cause to be deposited in an authorized depository for mail matter to be sent and delivered by the Post Office establishment of the United States, and did cause to be delivered by mail, according to the direction thereon, divers and sundry letters, packages, and writings, which said scheme and artifice to defraud was in substance as follows:

That an election for the office of Congressman in the Congress of the United States of America will be held in the Second Congressional District of the State of Louisiana in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana on November 5, 1940;

That in accordance with the provisions of Louisiana Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, a Democratic Primary election was held on September 10, 1940, in the said Second Congressional District of Louisiana for the purpose of selecting and nominating a candidate for the Democratic party to run in said election of November 5, 1940; that in the said Second Congressional District of Louisiana

nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;

That the defendants were selected as Commissioners of Election in accordance with the provisions of said Act No. 46 of 1940, to conduct and did conduct the said Democratic primary election in the second precinct of the eleventh ward of the City of New Orleans, which is in said Second Congressional District of Louisiana and in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court;

That in said Democratic primary election for Congressman from the Second Congressional District of Louisiana there were three candidates possessing the qualifications required by law, to wit, T. Hale Boggs, Paul H. Maloney, and Jacob Young; that the defendants were supporters of T. Hale Boggs for Congress, and of other candidates who were running for other district and local offices, and were affiliated with a certain faction known as the Jones-Noe-Old Regular Faction, which supported T. Hale Boggs for Congress;

That in said primary election on September 10, 1940, five hundred thirty-seven (537) citizens and qualified voters, who were legally registered as Democrats and entitled to vote, appeared at the election polling booth in said second precinct of the eleventh ward of New Orleans for the purpose of casting and did cast their votes in said election;

That the defendants, well knowing the premises aforesaid, did on the date aforesaid and at the place aforesaid, wilfully fail and refuse to count some of the votes cast in said election for Paul H. Maloney and for Jacob Young and did erase the marks on various ballots placed by said voters in said precinct behind the names of Paul H. Maloney and Jacob Young indicating votes for Paul H. Maloney and Jacob Young, and did place in lieu thereof marks behind the name of T. Hale Boggs indicating votes for T. Hale Boggs, and did wilfully fail and refuse to count votes cast for Paul H. Maloney and Jacob Young;

That the defendants certified and represented in writing to the Chairman of the Second Congressional District Committee of Louisiana that the vote for the office of Congressman from the Second Congressional District of Louisiana was as follows, to wit:

For T. Hale Boggs.....	526
For Paul H. Maloney.....	8
For Jacob Young.....	3

when in truth and in fact the correct vote cast was—

15	For T. Hale Boggs.....	426
	For Paul H. Maloney.....	94
	For Jacob Young.....	17

That it was a part of said scheme and artifice to defraud that the defendants would fail and refuse to count votes legally cast for Paul H. Maloney and Jacob Young in order to deprive them of the nomination for the office of Congressman in the Congress of the United States of America from the Second Congressional District of Louisiana, and would instead count votes which had been cast for Paul H. Maloney and Jacob Young for their own candidate, T. Hale Boggs, in order to defraud P. H. Maloney and Jacob Young of their right to be elected Congressman in the Congress of the United States from the Second Congressional District of Louisiana; to defraud and deprive the said Paul H. Maloney and the said Jacob Young of the emoluments of said office, to wit, the sum of Ten Thousand Dollars (\$10,000.00) per year for two years; to defraud and deprive the said Paul H. Maloney and the said Jacob Young of their nomination as candidates for the Democratic party in the election for said office; to defraud and deprive Paul H. Maloney and Jacob Young of votes cast for them in said primary election; to defraud and deprive the registered voters of the second precinct of the eleventh ward of New Orleans of the right to cast their votes for Paul H. Maloney and Jacob Young and to have their votes counted as cast; to defraud and deprive the Democratic party of its right to its legally selected nominee for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; to defraud and deprive the citizens of the Second Congressional District of Louisiana of the congressman of their choice; to defraud and deprive the State of Louisiana and the Secretary of State of Louisiana of the true record and vote cast in said precinct; and to defraud the United States of America and the Congress of the United States of America of the right to have a legally selected congressman from the Second Congressional District of Louisiana;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the pretenses, representations, and claims of the defendants herein, that the correct vote cast in said second precinct of the eleventh ward of New Orleans was as follows, to wit:

16	For T. Hale Boggs.....	526
	For Paul H. Maloney.....	8
	For Jacob Young.....	8

were false, untrue, and fraudulent in this to wit: that the true and correct vote cast in said precinct was:

For T. Hale Boggs	426
For Paul H. Maloney	94
For Jacob Young	17

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: that each and every one of the pretenses, representations, and claims made and intended to be made by the said defendants were false and untrue and intended to be false and untrue, and at all times mentioned herein were known by the said defendants to be false and untrue and were made and intended to be made by the defendants for the purpose of accomplishing the frauds hereinabove described;

That Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann, the defendants herein, on or about the 11th day of September 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this court for the purpose of executing the scheme and artifice aforesaid, unlawfully, fraudulently, and feloniously did knowingly deposit and cause to be deposited in an authorized depository for mail matter of the United States at New Orleans, Louisiana, a certain tally sheet for district offices, a certain tally sheet for parish offices, a certain poll list for district offices and a certain poll list for parish offices enclosed in a postpaid envelope addressed to Hon. Jas. A. Gremillion, Secretary of State, Baton Rouge, Louisiana, to be sent and delivered by the Post Office establishment of the United States, the face and reverse of which tally sheet for district offices were and are of the following tenor, to wit:

"1940 Primary for District Officers

TALLY SHEET

Of the amount of votes of the Democratic Primary Election held in the Second Precinct of the Eleventh Ward of the Parish of Orleans on the 10th day of September A. D. 1940, for Member of Congress, Second Congressional District and for Member of Public Service Commission, First Public Service Commission District.

TALLY

Officers and names	Amount of votes in letters	Amount of votes in figures
For Member of Seventy-Seventh Congress of the United States, Second Congressional District—T. Hale Boggs.	Five Hundred and Twenty-six.	526
For Member of Seventy-Seventh Congress of the United States, Second Congressional District—Paul H. Maloney.	Eight.....	8
For Member of Seventy-Seventh Congress of the United States, Second Congressional District—Jacob Young.	Three.....	3
For Member of the Louisiana Public Service Commission, First Public Service Commission District—Maurice B. Catlin.	Eight.....	8
For Member of the Louisiana Public Service Commission, First Public Service Commission District—Allen H. Johnson.	Three.....	3
For Member of the Louisiana Public Service Commission, First Public Service Commission District—Nathaniel B. Knight, Jr.	Five Hundred and Twenty.	520
For Member of the Louisiana Public Service Commission, First Public Service Commission District—James P. O'Connor, Jr.	One.....	1
For Member of the Louisiana Public Service Commission, First Public Service Commission District—Albert O. Rappelet.	0.....	0
18 For Member of the Louisiana Public Service Commission, First Public Service Commission District—Francis Williams.	Five.....	5

And having completed the count, which we certify to be correct, we have replaced the ballots thus counted, together with a District poll list showing the names of the voters who cast said ballots and a District tally sheet in the ballot box, which was sealed by us and will be delivered to the Clerk of the Criminal District Court, and will mail a duplicate District poll list showing the names of the voters who cast said ballots and a duplicate District tally sheet to Jas. A. Gramillion, Secretary of State, Baton Rouge, Louisiana, as required by Act 46 of 1940.

1. (Signed) PATRICK B. CLASSIC,
2. (Signed) JOHN A. MORRIS,
3. (Signed) BERNARD W. YEAGER, JR.,
4. (Signed) J. FLEDDERMANN,
5. (Signed) WM. SCHUMACHER,

Commissioners of Election.

Sworn to and subscribed before J. Fleddermann, Commissioner,
by _____

(Naming the Commissioners signing and taking oath.)

majority of the Commissioners serving at this, the 2 Precinct poll of Ward 11 of the Parish of ORLEANS, and by me sworn to and subscribed as correct, this 10th day of September A. D. 1940.

(Signed) J. FLEDDERMANN,
Any Commissioner.

That at the time of placing and causing to be placed the said package, tally sheet for district offices, tally sheet for parish offices, poll list for district offices and poll list for parish offices in an authorized depository for mail matter of the United States, aforesaid, the defendants, Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann, then and there well knew that the said package, the said tally sheet for district offices, the said tally sheet for parish offices, the said poll list for district offices, and the said poll list for parish offices were for the purpose of executing the said scheme and artifice and were for the purpose of defrauding Paul H. Maloney, Jacob Young, the legally and qualified registered voters of election precinct two, ward eleven of the City of New Orleans, the Democratic party of the Second Congressional District of Louisiana, the citizens of the Second Congressional District of Louisiana, the State of Louisiana, the Secretary of State of Louisiana, the United States of America and the Congress of the United States; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT SIX

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That one Patrick B. Classic, one John A. Morris, one Bernard W. Yeager, Jr., one William Schumacher, and one J. J. Fleddermann, hereinafter called the defendants, together with divers and sundry other persons to your Grand Jurors unknown, heretofore, to wit, on or about September 10, 1940, and continuously up to and including September 11, 1940, at New Orleans, Louisiana, in the New Orleans Division of the Eastern District of Louisiana and within the jurisdiction of this Court, so having unlawfully, wilfully, knowingly, and fraudulently devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and claims, that is to say, the same scheme and artifice that is set forth and described in the fifth count of this indictment, the allegations concerning which in said fifth count are incorporated by reference thereto in this count as fully as if they were here repeated, and for the purpose of executing said scheme and artifice, unlawfully, fraudulently, and feloniously did knowingly deposit and cause to be deposited in an authorized depository for mail matter of the United States at New Orleans, Louisiana, a certain tally sheet for district offices and a certain poll list for district offices enclosed in a postpaid envelope addressed to Hon. Edw. A. Haggerty, Chairman Demo-

cratic Executive Committee Second Congressional District, New Orleans, Louisiana, to be sent and delivered by the Post Office establishment of the United States, the face of which tally sheet for district offices was and is of the following tenor to wit:

"Second Congressional District

TALLY SHEET

Of the amount of votes of the Democratic Primary Election held in the Second Precinct of the Eleventh Ward in the Parish of Orleans on the 10th day of September A. D. 1940, for Member of the Seventy-Seventh Congress of the United States, from the Second Congressional District of Louisiana, for the term expiring January 3rd, 1943.

20

TALLY

Officers and names	Amount of Votes in Letters	Amount of Votes in Figures
For Member of the Seventy-Seventh Congress of the United States, Second Congressional District.—T. Hale Boggs.	Five Hundred and twenty six.	526
For Member of the Seventy-Seventh Congress of the United States, Second Congressional District.—Paul H. Maloney.	Eight.....	8
For Member of the Seventy-Seventh Congress of the United States, Second Congressional District.—Jacob Young.	Three.....	3

We hereby certify that this tally sheet shows a true and correct tabulation of the votes cast at aforesaid precinct for the offices shown hereon and that this tally sheet will be mailed to Edward A. Haggerty, Chairman, Second Congressional District Democratic Executive Committee, New Orleans, La., as required by Act 46 of 1940.

1. (Signed) PATRICK B. CLASSIC,
2. (Signed) JOHN A. MORRIS,
3. (Signed) BERNARD W. YEAGER, Jr.,
4. (Signed) J. FLEDDERMANN,
5. (Signed) WM. SCHUMACHER,

Commissioners of Election.

Sworn to and subscribed before J. Fleddermann, Commissioner,

by

(Naming the Commissioners signing and taking oath.)

majority of the Commissioners serving at this, the 2nd Precinct poll of Ward 11 of the Parish of Orleans, and by me sworn to and subscribed as correct, this 10th day of September, A. D. 1940.

(Signed) J. FLEDDERMANN,

Any Commissioner."

That at the time of placing and causing to be placed the said package, said tally sheet for district offices and the said poll list

for district offices in an authorized depository for mail matter of the United States, aforesaid, the defendants, Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann, then and there well knew that the said package, the said tally sheet for district offices and the said poll list for district offices were for the purpose of
21 executing the said scheme and artifice and were for the purpose of defrauding Paul H. Maloney, Jacob Young, the legally and qualified registered voters of election precinct two, ward eleven of the City of New Orleans, the Democratic party of the Second Congressional District of Louisiana, the citizens of the Second Congressional District of Louisiana, the State of Louisiana, the Secretary of State of Louisiana, the United States of America and the Congress of the United States; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Signed) RENE A. VIOSCA,
United States Attorney.

(Signed) J. SKELLY WRIGHT,
Assistant U. S. Attorney.

(Signed) HILARY J. GAUDIN,
Assistant U. S. Attorney.

(Signed) ROBERT WEINSTEIN,
Assistant U. S. Attorney.

A true bill.

New Orleans, La., Sept. 25, 1940.

(Signed) E. R. DU MONT, *Foreman.*

22 In United States District Court, Eastern District
of Louisiana

[Title omitted.]

Demurrer

Filed October 9, 1940

*To the Honorable the Judge of the United States District Court
for the Eastern District of Louisiana, New Orleans Division:*

Now into court come Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacker, and J. J. Fleddermann, defendants in the above numbered and entitled cause, appearing herein through their attorneys, Charles W. Kehl and Fernando J. Cuquet, Jr., and demur to the indictment and for the cause of said demurrer say:

1. That the matters alleged in said indictment and in each count thereof do not constitute any offense against the laws of the United States.

2. That there is no allegation that the citizens and qualified voters of the second precinct of the eleventh ward of N. O. in the Second Congressional District of Louisiana or the Democratic nominees for the office of Congress from the Second Congressional District of Louisiana were deprived of any rights, privileges, or immunities secured and protected by the constitution or laws of the United States on account of said voters and nominees being aliens or by reason of their color or race and that as there was no discrimination whatsoever against the latter within the meaning of the statute the indictment is defective and fails to allege a crime against the U. S.

3. That the allegation in counts 2, 3, and 4 to the effect that the defendants were State officials, are mere conclusions and that the facts set out in the three aforementioned counts are insufficient to constitute the defendants as state officials and that hence counts 2, 3, and 4 do not set out a Federal crime within 18 U. S. C. A. No. 52.

4. That the facts set out in counts 5 and 6 are insufficient to constitute a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises and use of the mails in the execution thereof within the meaning of the mail fraud statute.

Wherefore it is prayed that this demurrer be maintained, the indictment dismissed and the defendants discharged without delay.

(Signed) CHARLES W. KEHL,

(Signed) FERNANDO J. CUQUET, Jr.,

Attorneys for Defendants.

[Duly sworn to by Patrick B. Classic, Wm. E. Schumacker, J. A. Morris, Jos. J. Fleddermann, Bernard W. Yeager, Jr.; Jurat omitted in printing.]

24 In United States District Court, Eastern District of Louisiana, New Orleans Division

[Title omitted.]

Opinion

Filed October 9, 1940

CAILLOUET, J.: There are six (6) counts in the Indictment returned by the Grand Jury, in the above-entitled and numbered case, against Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann.

They have filed a demurrer to said indictment, and insofar as objection is urged to counts 1, 2, 3, and 4, the Court sustains said

demurrer on the ground that no provision of Sections 19 and 20 of the Criminal Code (Secs. 51 and 52, Title 18, U. S. C. A.) refers or has application to the state of facts detailed in said four counts.

The provisions of Section 51, depended upon by the Government as justifying the conspiracy charge covered by count 1, read:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

The count charges that there was a conspiracy—

"* * * to injure, oppress, threaten, and intimidate citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States." and that, at a primary election held on September 10th, 1940, in accordance with the provisions of Act No. 46 of the Regular Session of the Legislature of the State of Louisiana for the year 1940, for the purpose of selecting and nominating a candidate for the Democratic party to run in the election for the office of Congressman in the Congress of the United States of America, to be held in the Second Congressional District of the State of Louisiana, on November 5th, 1940, in accordance with the provisions of the Constitution and laws of the United States and of the State of Louisiana, the defendants, then and there serving as Commissioners of Election, in accordance with said Act 46 of 1940, did, as part and purpose of said conspiracy "to injure, oppress, threaten, and intimidate" citizens and registered voters who cast their ballots in said primary election, at the 2nd precinct of the 11th ward of the City of New Orleans, in said Second Congressional District, as well as two of the three candidates for the nomination as Democratic candidate for the Office of Congressman from said District, to be voted on at the General Election of November 5, 1940, change and alter ballots cast for said two candidates to read in favor of the third and successful candidate, and did so mark and report the same, thereby depriving the voters, who had so cast their ballots in favor of either of his two opponents, of the free exercise and enjoyment of their rights and privileges secured to them by the Constitution and laws of the United States, in this wise, to wit: "their rights and privileges to vote and to have their votes counted as cast for the candidate of their choice in said election"; and, furthermore, thereby depriving each of the first mentioned two candidates of their own rights and privileges secured to them by such Constitution and laws, i. e., "by preventing each of them from being legally and properly nominated as a candidate for said office" and by not having counted for them, as cast, all of the votes actually cast for each in said

primary election. The count specifically alleging that "in the Second Congressional District of Louisiana nomination as the candidate of the Democratic party is and has always been equivalent and tantamount to election, and that, without exception, since the adoption of the first primary election law by the State of Louisiana in the year 1900, the Democratic nominee for the office of Congressman from the Second Congressional District of Louisiana has been elected;"

Section 52 provides, in part, as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, * * * shall be fined, etc."

26. The foregoing is depended upon by the Government as justifying the charges covered by counts 2, 3, and 4 to the effect, respectively, that the defendants did "unlawfully, wilfully, knowingly, and feloniously subject and cause to be subjected" not only registered voters of the 2nd precinct of the eleventh ward of the City of New Orleans, in the Second Congressional District of the State of Louisiana, but the two unsuccessful candidates, at said Democratic primary election of September 10, 1940, for the Democratic nomination as Candidate for the office of Congressman at the general election to be held on November 5, 1940, "to the deprivation of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States"; such voters having been deprived, it is alleged, of "their right to cast their votes for the candidates of their choice, and to have their votes counted for such candidate as cast in the Democratic primary election of September 10, 1940," and each of said two unsuccessful candidates, having been deprived of his "rights, privileges, and immunities—

(1) to offer himself as a candidate for the office of Congressman in the Congress of the United States for the Second Congressional District of Louisiana;

(2) to be legally and properly nominated as a candidate for the office of Congressman in the Congress of the United States from the Second Congressional District of Louisiana; and

(3) to have counted for him all votes legally cast for him for said nomination for said office;"

As was held in *Newberry et al. vs. United States*, 256 U. S. 232, 41 Sup. Ct. 469 (1921), and in prior cases cited by the majority opinion, the source of Congressional power over elections for United States Senators and Representatives is found in Section 4, Article 1, of the Federal Constitution, reading as follows:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators." But the "elections" therein referred to are "general" elections and not "primary" elections, which are not final and of themselves do not "elect" anyone to serve either in the Senate or House of Representatives;

27 no power to control party primary elections, such as the Democratic primary election of September 10th, 1940, was ever intended at the time that the Constitution was adopted; "primary" elections for the nominating of candidates for the offices of either Senator or Member of the House of Representatives were not even within the orbit of the Convention's deliberations on the subject of representation in the National Congress, as "primaries" were then unknown; and, as Justice McReynolds pertinently observed in the court's majority opinion, the history of that time indicates "beyond a reasonable doubt" that, if the makers of the Constitution had contended for a construction of Section 4 of Article I that included and affected a State's legally prescribed medium for the nomination of party candidates seeking to be "elected" to either the Senate or the House of Representatives, this would not have been ratified by the State Conventions.

Under the Newberry Case, it must here be said, as was then by the organ of the Court, viz:

"We can not conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of power to regulate the manner of holding elections."

The "free exercise or enjoyment" of the right or privilege of participating in the primary election of September 10, 1940, either as voter, or candidate for the Democratic nomination for the office of Congressman, to be voted on at the general election on November 5, 1940, was not "secured," nor "secured and protected," to voter or candidate "By the Constitution or laws of the United States," although the four counts here in question so read.

The provisions of Sections 51 and 52, so depended upon by the Government to support counts 1, and 2, 3, and 4, respectively, of the indictment levelled against the five defendants, could only be made applicable (if these provisions were otherwise susceptible of legal application) to the facts charged as having only come into being in connection with a party primary election held on September 10, 1940, "by stretching old statutes to new uses, to which they are not adapted and for which they were not intended," to use the expression of the Supreme Court, in the case of *United States vs. Gradwell, etc.*, 243 U. S. 476, 37 Sup. Ct. 407 (1917).

28 Clearly, these statutory provisions of 1870 have no application here.

Under both of the foregoing constructions—that of Section 4 of Article 1 of the United States Constitution, as well as that of Sections 19 and 20 of the Criminal Code (Secs. 51 and 52, Title 18 U. S. C. A.)—the demurrer filed must be, and is, **SUSTAINED** insofar as it relates to the first four of the six counts of the indictment, and the said four counts are hereby **DISMISSED**.

(Signed A. J. CAILLOUET,
Judge.

29 In United States District Court, Eastern District of
Louisiana

Order sustaining demurrer and dismissing first four counts

October 9, 1940

This cause came on this day to be heard upon the demurrer filed on behalf of the defendants herein.

Present: Charles W. Kehl and Fernando J. Cuquet, Jr., Esqs., Attorneys for the defendants, and Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., Wm. Schumacher, and J. J. Fleddermann, the defendants, in person. Rene A. Viosca, Esq., United States Attorney, appearing on behalf of the United States.

Whereupon, after hearing the motion and the statements of counsel for the respective parties and on consideration thereof, the Court, as appears by the written opinion on file herein, sustained the demurrer insofar as it relates to the first four of the six counts of the Indictment, and accordingly dismissed the said four counts.

The Court continued the hearing on the demurrer, as to Counts 5 and 6, until Tuesday, October 22, 1940, at 2:00 o'clock P. M.

30 In United States District Court, Eastern District of
Louisiana

[Title omitted.]

Judgment and decree

Filed October 14, 1940

On the 9th day of October 1940, came the United States of America by Rene A. Viosca, United States Attorney for the Eastern District of Louisiana, and came the defendants Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann, appearing in their own proper persons and by Charles W. Kehl and Fernando J. Cuquet, Jr., their attorneys, and a hearing was, then and there, had of said defendants' demurrer to the indictment in the above entitled

cause, insofar as said demurrer relates to counts 1, 2, 3, and 4 of said indictment, but not as to counts 5 and 6 thereof, the hearing as to which two counts was deferred until October 22, 1940, at 2:00 o'clock P. M.

The matter at issue having been argued by counsel and duly submitted to the Court for decision, it is, therefore, now

Ordered, adjudged, and decreed by the Court, for the reasons set forth in the written opinion of the Court filed in these proceedings, on said October 9, 1940, that the demurrer be, and it is, hereby, sustained insofar as it relates to counts 1, 2, 3, and 4 of the indictment, and that each of said four mentioned counts be, and the same is, hereby quashed and dismissed.

New Orleans, October 14th, 1940.

(Signed) A. J. CAILLOUET,
Judge.

31 In United States District Court, Eastern District
of Louisiana

[Title omitted.]

Petition for appeal

Filed November 7, 1940

Comes now the United States of America, plaintiff herein, and states that in an opinion rendered on October 9, 1940, and in a judgment filed on October 14, 1940, the District Court of the United States for the Eastern District of Louisiana sustained a demurrer to and quashed and dismissed certain counts of the indictment herein, including Counts 1 and 2, and the United States of America feeling aggrieved at the ruling of said District Court in sustaining the demurrer to and quashing and dismissing Counts 1 and 2, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment, and that a transcript of the record in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
(Signed) RENE A. VIOSCA,
*United States Attorney for the
Eastern District of Louisiana.*
(Signed) ROBERT WEINSTEIN,
Assistant United States Attorney.

24 UNITED STATES VS. PATRICK B. GLASSCO ET AL.

38 In United States District Court, Eastern District of
Louisiana

[Title omitted.]

Assignments of error

Filed November 7, 1940

Comes now the United States of America by Rene A. Viosca, United States Attorney for the Eastern District of Louisiana, and avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the Court erred in sustaining as to Counts 1 and 2 the demurrer to the indictment and in quashing and dismissing those counts.

2. That the Court erred in its interpretation and construction of U. S. C., Title 18, Sections 51 and 52.

3. That the Court erred in holding that a conspiracy to deprive citizens of their right to have their votes counted as cast for the candidate of their choice at a Congressional primary is not punishable under U. S. C., Title 18, Section 51.

4. That the Court erred in holding that the conduct of election officials, acting under color of state law, in depriving voters, who were inhabitants of the State of Louisiana, to their right to have their votes counted as cast for the candidate of their choice at a Congressional primary is not punishable under U. S. C., Title 18, Section 52.

39 5. That the Court erred in holding that the right of a voter at a Congressional primary to have his vote counted as cast for the candidate of his choice is not a right, privilege or immunity secured and protected by the Constitution of the United States.

(Signed) RENE A. VIOSCA,
United States Attorney for the
Eastern District of Louisiana,

(Signed) ROBERT WEINSTEIN,
Assistant United States Attorney.

40 In United States District Court, Eastern District of
Louisiana

[Title omitted.]

Order allowing appeal

Filed November 7, 1940

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for the reversal of the judgment in this cause insofar as it sustained a demurrer to and quashed and dismissed Counts 1 and 2 of the indictment in said cause, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered such petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the judgment of this Court sustaining the demurrer to and quashing and dismissing Counts 1 and 2 of the indictment, to the Supreme Court of the United States and that a duly certified copy of the record of said
41 cause be transmitted to the Clerk of the Supreme Court.

It is further ordered that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Baton Rouge, La., this 7th day of November 1940.

By the Court:

(Signed) A. J. CAILLOUET,
United States District Judge.

43 [Citation in usual form showing service on Chas. Kehl,
et al. omitted in printing.]

44 In United States District Court, Eastern District
of Louisiana

[Title omitted.]

Praeipie for transcript of record

Filed November 7, 1940

*To the Clerk, United States District Court for the Eastern District
of Louisiana:*

The appellant hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the Eastern District of Louisiana, in connection with its appeal to the Supreme Court of the United States, you include the following:

1. Indictment.
2. Demurer.
3. Opinion.
4. Judgment.
5. Minute entries.
6. Petition for appeal to the Supreme Court.
7. Statement of jurisdiction of Supreme Court.
8. Assignments of error.
9. Order allowing appeal.
10. Notice of service on appellees of petition for appeal, order allowing appeal, assignments of error, and statement as to jurisdiction.
11. Citation.
12. Praeipie.

45

(Signed) RENE A. VIOSCA,
*United States Attorney for the
Eastern District of Louisiana.*

(Signed) ROBERT WEINSTEIN,
Assistant U. S. Attorney.

Service of the foregoing Praeipie for Transcript of Record is acknowledged this 8th day of November 1940.

(Signed) CHAS. KEHL,

(Signed) F. J. CUQUET, Jr.,
per W. O. C.

(Signed) WARREN O. COLEMAN,
Counsel for Appellees.

46

[Clerk's certificates to foregoing transcript omitted in printing.]

47 In the Supreme Court of the United States

[Title omitted.]

Statement of points to be relied upon and designation of record

Filed Dec. 19, 1940

Pursuant to Rule 13, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

FRANCIS BIDDLE,
Solicitor General.

1940.

Service of the above Statement of Points and Designation of Record is acknowledge this 16th day of December 1940.

CHAS. KEHL,
F. CUQUET,
Per M. O. C.

Counsel for Appellees.

WARREN O. COLEMAN,

[Endorsement on cover:] File No. 44967. E. Louisiana, D. C. U. S. Term No. 618. The United States of America, Appellant, vs. Patrick B. Classic, John A. Morris, Bernard W. Yeager, Jr., William Schumacher, and J. J. Fleddermann. Filed December 12, 1940. Term No. 618 O. T. 1940.